ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AZ-094-FOAa; FRL-]

Determination of Attainment for the Carbon Monoxide National Ambient Air Quality Standard for the Phoenix Metropolitan Area, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final rule.

SUMMARY: EPA is taking direct final action to find that the Phoenix metropolitan nonattainment area in Arizona has attained the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO) by its Clean Air Act deadline of December 31, 2000. The Phoenix area has had no qualifying exceedances of the CO standard since 1996, and has six years of clean air quality data.

EFFECTIVE DATE: This action is effective on [insert date 30 days from the date of publication in the Federal Register] without further notice. Elsewhere in this Federal Register, we are proposing approval and soliciting written comment on this action; if we receive adverse comments by [insert date 30 days from the date of publication in the Federal Register], we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

ADDRESSES: Comments should be mailed or emailed to Wienke Tax, Office of Air Planning (AIR-2), U.S. Environmental Protection

Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, tax.wienke@epa.gov. We prefer electronic comments.

You can inspect copies of EPA's Federal Register notice and TSD at our Region IX office during normal business hours (see address above). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you. The Federal Register notice and TSD are also available as electronic files on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street (AIR-2), San Francisco, California 94105-3901. Phone: (520) 622-1622, email: tax.wienke@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document, the words "we", "us", or "our" mean U.S. EPA.

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I. Background

A. Designation and Classification of CO Nonattainment Areas.

The Clean Air Act Amendments (CAAA) of 1990 authorized EPA to designate areas across the country as nonattainment, and to classify these areas according to the severity of the air pollution problem. Pursuant to section 107(d) of the CAAA, following enactment on November 15, 1990, States were requested to submit lists, within 120 days, which designated all areas of the country as either attainment, nonattainment, or unclassifiable for CO. The EPA was required to promulgate these lists of areas no later than 240 days following enactment of the CAAA (See 56 FR 56694, (November 6, 1991)).

On enactment of the CAAA, a new classification structure was created for CO nonattainment areas, pursuant to section 186 of the CAAA, which included both a moderate and a serious area classification. Under this classification structure, moderate areas with a design value of 9.1-16.4 ppm, were expected to attain the CO NAAQS as expeditiously as practicable, but no later than December 31, 1995. CO nonattainment areas designated as serious, with a design value of 16.5 ppm and above, were expected to attain the CO NAAQS as expeditiously as practicable, but no later than December 31, 2000.

States containing areas classified as either moderate or

serious for CO had the responsibility of developing and submitting to EPA State Implementation Plans (SIPs) which addressed the nonattainment air quality problems in those areas. The air quality planning requirements for moderate and serious CO nonattainment areas are addressed in sections 186-187 respectively of the CAAA, which pertain to the classification of CO nonattainment areas as well as to the requirements for the submittal of both moderate and serious area SIPs. The EPA issued general guidance concerning the requirements for SIP submittals, which included requirements for CO nonattainment area SIPs, pursuant to Title I of the CAAA (See generally, 57 FR 13498 (April 16, 1992), and 57 FR 18070 (April 28, 1992)).

The EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date.[1]

B. How Does EPA Make Attainment Determinations?

Section 179(c)(1) of the CAAA provides that attainment determinations are to be based upon an area's "air quality as of the attainment date", and section 186(b)(2) is consistent with this requirement. EPA makes the determination as to whether an area's air quality is meeting the CO NAAQS based upon air quality data gathered at CO monitoring sites in the nonattainment area. These air quality data are entered into the Aerometric

[1]See sections 172(C), 179(c) and 186(b)(2) of the CAAA.

Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR 50.8, and in accordance with EPA policy and guidance.[2]

Attainment of the CO NAAQS requires that not more than one 8-hour average per year can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances). CO attainment is evaluated and determined by reviewing 8 quarters of data, or a total of 2 complete calendar years of data for an area. If an area’s design value is greater than 9.0 ppm, this means that a monitoring site in the area has recorded more than one value above the level of the NAAQS and therefore the area has not attained the CO NAAQS.

The 8-hour CO design value is used to determine attainment of CO areas. The design value for an area is determined by first finding the design value at each CO monitoring site in the area. The highest of these individual site design values then becomes the design value for the area. To determine the design value for a site we look at the highest and second highest (non-overlapping) 8-hour values for the most recent two years prior to the attainment date (in this case 1999 and 2000). The highest of the two second high values is used as the design value for the

[2] The relevant guidance is in a memorandum from William G. Laxton, Director Technical Support Division, entitled “Ozone and Carbon Monoxide Design Value Calculations”, dated June 18, 1990.

monitoring site.

C. What Is the Attainment Date for the Phoenix Metropolitan CO Nonattainment Area?

Phoenix was originally classified as a moderate CO nonattainment area, with an attainment date no later than December 31, 1995. On May 10, 1996, EPA made a finding that Phoenix did not attain the CO NAAQS by the December 31, 1995 attainment date for the moderate nonattainment area. This finding was based on EPA's review of monitored air quality data for compliance with the CO NAAQS. As a result of this finding the Phoenix CO nonattainment area was reclassified as a serious CO nonattainment area (See 61 FR 39343, July 29, 1996), and its attainment date was extended to December 31, 2000. Phoenix has not had a qualifying exceedance of the CO NAAQS since 1996, and therefore has more than enough years of clean data for EPA to make an attainment finding.

II. Basis for EPA's Action

Arizona has 13 CO monitoring sites in the Phoenix CO nonattainment area. The air quality data in AIRS for these monitors show that, for the 2-year period from 1999 through 2000, there were no violations of the 8-hour CO standard. The monitoring site with the highest 8-hour design value during this 2-year period was at the Grand Ave and 27th Ave. which had a design value of 8.1 ppm. Based on this information, EPA has

determined that the area attained the CO NAAQS standard as of the attainment date of December 31, 2000.

This finding of attainment should not be confused with a redesignation to attainment under CAAA section 107(d). Arizona has recently submitted a redesignation request and a maintenance plan for CO as required under section 175A(a) of the CAAA, which EPA intends to act on in the near future. The area will remain a serious CO nonattainment area with the planning requirements that apply to serious CO nonattainment areas until such time that EPA acts on the redesignation request and maintenance plan.

III. EPA's Action

By today’s action, EPA is making the determination that the Phoenix serious CO nonattainment area did attain the CO NAAQS by the attainment date of December 31, 2000 based on no qualifying exceedances since 1996. As explained above, the Phoenix nonattainment area remains classified a serious CO nonattainment area, and today's action does not redesignate the Phoenix nonattainment area to attainment.

IV. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly

Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as

specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.).

The Congressional Review Act, 5 U.S.C. section 801 *et seq*.,

as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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Date: Wayne Nastri,
Regional Administrator
Region 9

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